

REMARKS/ARGUMENTS

Favorable reconsideration of this application, as presently amended and in light of the following discussion, is respectfully requested.

After entry of the foregoing amendments, Claims 1-13 are pending in the present application. Claims 1-4 are presently under consideration; and Claims 5-13 are presently withdrawn without prejudice or disclaimer. Claims 1, 3, and 4 are amended without introduction of new matter.

In the outstanding Office Action, the title was objected to; Claims 1-4 were rejected under 35 U.S.C. 103(a) as unpatentable over U.S. Patent No. 6,195,646 to Grosh et al. (hereinafter “Grosh”) in view of U.S. Patent No. 5,825,883 to Archibald et al. (hereinafter “Archibald”).

Regarding the objection to the title, the title is amended in view of the Examiner’s comments. Accordingly, Applicants respectfully request that the objection to the title be withdrawn.

Addressing now the rejection of Claims 1-4 under 35 U.S.C. 103(a) as unpatentable over Grosh in view of Archibald, that rejection is respectfully traversed.

Though they are different in scope, each of independent Claims 1, 3, and 4 recites structure or steps to “[compute] a pricing index for said information context based on a ratio of the number of times said information context have been downloaded ... and the number of times said information context have been reproduced.” Claim 2 depends from Claim 1.

At step 64 of Applicants Figure 11, the present application provides a non-limiting example of the above-noted computation. With respect thereto, Applicants disclosure states that a pricing index may be defined as

$$\text{Going} = \text{SRP} \times \text{F}(\text{NPLY}, \text{NDWN}),$$

where

$$F(\text{NPLY}, \text{NDWN}) = (\text{NPLY}/\text{NDWN}) \times 0.05.$$

The variables are defined as follows: NDWN = a total download count; NPLY = a total reproduction count; and SRP = a reference price. Thus, price index is based on a ratio of a total download count (NDWN) and a total reproduction count (NPLY). As long as the balance between the total download count (NDWN) and the total reproduction count (NPLY) remains within a predetermined range, the pricing index (Going) is considered relatively equal to the reference price (SRP). If the total download count (NDWN) becomes greater than the total reproduction count (NPLY), then supply surpasses demand and the pricing index (Going) becomes lower than the reference price (SRP). On the other hand, if the total download count (NDWN) becomes less than the total reproduction count (NPLY), then supply is falling behind demand and the pricing index (Going) has become higher than the reference price (SRP).¹

The outstanding office action cites Grosh as teaching the acquisition of a number of times information context are downloaded; and cites Archibald as teach the acquisition of the number of times the information context are produced.² As motivation for the proposed combination, the Office Action asserts, “it would obvious to one of the ordinary skill in the art at the time of the invention was made to use Archibald’s teaching of tracking copies of digital content in a network system and Grosh’s disclosure of metering and weighing information to compute a price index because it eliminates the factor of privacy on sales information and informs more actually usage numbers (col. 5, lines 49-54).”

Thus, the Office Action asserts that the proposed combination of Grosh and Archibald teaches the acquisition of both the number of times information content are downloaded and the number of times information contents are reproduced. However, there is no assertion or indication that the proposed combination teaches the claimed computation of

¹ Applicants’ specification, page 23, line 17 – page 25, line 2.

² Office Action, 4/8/2005, page 3.

“a pricing index for said information contents based on a ratio of the number of times said information contents have been downloaded ... and on the number of times said information contents have been reproduced.”

Further, even assuming *arguendo* the asserted motivation is proper, the asserted motivation could only suggest the acquisition of the number of times information contents are downloaded and reproduced. The asserted motivation could not suggest the use of both factors in the computation of a single pricing index. Thus, as the asserted motivation does not suggest at least one difference (e.g., computation of pricing index via the above factors) between the claimed inventions and the applied references,³ the proposed combination of those references does not teach each feature of the claimed inventions. Moreover, neither Grosh nor Archibald teaches a computation of a pricing index based on “a ratio” between such factors; and, the asserted motivation fails to suggest such a ratio.

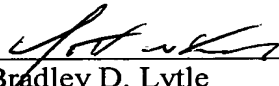
Accordingly, for the above-stated reasons, Applicants respectfully request that the rejection of Claims 1-4 under 35 U.S.C. 103(a) as unpatentable over Grosh in view of Archibald be withdrawn.

³ In re Vaeck, 20 USPQ 2d 1438, 1444 (CAFC 1991).

Consequently, in light of the above discussion and in view of the present amendment, the present application is believed to be in condition for allowance. An early and favorable action to that effect is respectfully requested.

Respectfully submitted,

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